Assembly Bill No. 1845

Passed the Assembly August 30, 2012

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Chief Clerk of the Assembly

Passed the Senate August 29, 2012

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Secretary of the Senate

This bill was received by the Governor this _____ day of _____, 2012, at _____ o'clock ___M.

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Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 803, 821, 1030, 1032, 1032.5, 1088.5, 1142, 1329.1, 1335, 1338, 1375.1, 1381, 1521, 1595, 3701, 4701, 13021, and 13021.5 of, and to add Section 1026.1 to, the Unemployment Insurance Code, relating to unemployment insurance, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1845, Solorio. Unemployment compensation benefits: overpayment assessments: termination: income tax withholding.

Existing law requires the Director of Employment Development to maintain a separate reserve account for each employer, and generally requires the director to credit each reserve account with all the contributions paid on the employer's behalf and to charge against the employer's reserve account unemployment compensation benefits paid to an unemployed individual during any benefit year during his or her base period. Under existing law, certain benefits paid to claimants are not charged to an employer's reserve account, except as provided, if the department rules that specified circumstances exist.

This bill would provide that an employer's reserve account is not relieved of charges relating to a benefit overpayment established on or after October 22, 2013, if the department determines that the payment was made because the employer, or an agent of the employer, was at fault for failing to respond timely or adequately to requests of the department for information relating to the individual claim for unemployment compensation benefits, as provided.

Existing law permits certain employing units to elect to pay the cost of benefits into the Unemployment Fund in lieu of paying contributions required of employers. Existing law provides that the cost of benefits charged to that employer includes benefits or payments improperly paid.

This bill would provide that the cost of benefits charged to an employer under that election include credits of benefit overpayments actually collected by the department, unless the department determines that the payment was made because the

entity, or an agent of the entity, was at fault for failing to respond timely or adequately to requests of the department for information relating to the individual claim for unemployment compensation benefits, as provided. This provision would apply to benefit overpayments established on or after October 22, 2013.

Existing law requires each employer to report to the department, as specified, the hiring of any employee who works in this state and to whom the employer anticipates paying wages.

This bill would additionally require each employer to report the hiring of any employee who previously worked for the employer, but had been separated from such prior employment for at least 60 consecutive days.

Existing law allows an employer that is entitled to receive notice of the filing of a new or additional claim for unemployment benefits to submit to the Employment Development Department facts explaining the reasons for the claimant leaving the employer's employ; however, the employer is restricted to providing reasons only from a specified list that the department will use to determine the cause of termination. Existing law also allows a base period employer that is not entitled to receive notice of the filing of a new or additional claim for unemployment benefits, but is entitled to notice of computation, to submit to the department facts explaining the reasons for the claimant leaving the employer's employ; however, the employer is restricted to providing reasons only from a specified list that the department will use to determine the cause of termination.

This bill would expand these lists to include as a reason, the claimant leaving the employer's employ for a substantially better job.

Existing law allows an employer that is entitled to receive notice of the filing of a primary claim or additional claim for extended unemployment compensation benefits or federal-state extended benefits to submit to the Employment Development Department any facts explaining the reason for the claimant leaving the employer's employ; however, the employer is restricted to providing reasons only from a specified list that the department will use to determine the cause of termination.

This bill would expand these lists to include the claimant leaving the employer's employ for reason of a substantially better job or

to protect his or her family or himself or herself from domestic violence abuse.

Existing law provides that a claim for unemployment compensation benefits may be canceled if the individual has not been deemed ineligible for unemployment compensation benefits, has not been overpaid unemployment compensation benefits, and has not collected unemployment compensation benefits.

This bill would, in order to cancel a claim for unemployment compensation benefits, add an additional requirement that the individual request to cancel the claim during the benefit year of that claim or the extended duration period of that claim.

Existing law authorizes the Employment Development Department to administer the federal-state unemployment insurance program and provides for the payment of unemployment compensation benefits to eligible individuals who are unemployed through no fault of their own.

Federal law requires, on and after October 22, 2013, at the time a state agency determines an erroneous payment from its unemployment insurance fund was made to an individual due to fraud committed by the individual, the assessment of a penalty on the individual in an amount of not less than 15% of the amount of the erroneous payment, and requires that assessment to be deposited into the unemployment insurance fund of the state.

Under existing law, if the Director of Employment Development finds that an individual has been overpaid unemployment compensation benefits because he or she, for the purpose of obtaining those benefits, either made a false statement or representation, with actual knowledge of the falsity, or withheld a material fact, the director is required to assess against the individual an amount equal to 30% of the overpayment amount. Existing law requires the assessments collected to be deposited in the Benefit Audit Fund.

This bill would instead, for penalty assessments established on and after October 22, 2013, require that overpayment assessment amount to be deposited 50% into the Unemployment Trust Fund and 50% into the Benefit Audit Fund.

By depositing additional amounts into the Unemployment Trust Fund in the Unemployment Fund, which is a continuously appropriated special fund, this bill would make an appropriation.

Under existing law, if the Director of Employment Development finds that any employer or any employee, officer, or agent of any employer, in submitting facts concerning the termination of a claimant's employment or in submitting a written statement concerning the reasonable assurance of a claimant's reemployment pursuant to specified provisions of unemployment insurance law, willfully makes a false statement of representation or willfully fails to report a material fact concerning that termination or the reasonable assurance of that reemployment, the director must assess a penalty against the employer in an amount not less than 2 nor more than 10 times the weekly benefit amount of that claimant. Existing law requires the penalties to be deposited into the Employment Development Department Contingent Fund, a continuously appropriated fund.

This bill would instead provide that the penalty be assessed on an employer or agent of the employer, depending on who the director finds was at fault for willfully making a false statement or representation or for willfully failing to report a material fact concerning that termination or the reasonable assurance of that reemployment. The bill would provide that if both the employer and the agent of the employer were at fault, this penalty would be assessed against the employer and another penalty would be assessed against the agent of the employer. This bill would further provide that the additional penalties that are assessed against an agent of the employer be available for the specified purposes upon appropriation by the Legislature for those purposes.

Existing law requires employers to withhold income taxes each calendar quarter, file a withholding report, a quarterly return, a report of wages, and pay over the taxes so required to be withheld. Existing law requires employers to remit the total amount of income tax withheld within a specified number of banking days, and uses banking days to determine when a payment is complete.

This bill would, under those provisions, on and after January 1, 2013, use business days to measure time instead of banking days, as provided.

This bill would incorporate additional changes in Section 1088.5 of the Unemployment Insurance Code, proposed by AB 174 and AB 1794, that would become operative only if this bill and either or both of those bills are chaptered and become effective January 1, 2013, and this bill is chaptered last.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 803 of the Unemployment Insurance Code is amended to read:

803. (a) As used in this section, "entity" means any employing unit that is authorized by any provision of Article 4 (commencing with Section 701) or by Section 801 or 802 to elect a method of financing coverage permitted by this section.

(b) In lieu of the contributions required of employers, an entity may elect any one of the following:

(1) To pay into the Unemployment Fund the cost of benefits, including extended duration benefits and federal-state extended benefits, paid based on base period wages with respect to employment for the entity and charged to its account in the manner provided by Section 1026, pursuant to authorized regulations that shall prescribe the rate or amount, time, manner, and method of payment or advance payment or providing a good and sufficient bond to guarantee payment of contributions.

(2) Two or more entities may, pursuant to authorized regulations, file an application with the director for the establishment of a joint account for the purpose of determining the rate of contributions they shall pay into the Unemployment Fund to reimburse the fund for benefits paid with respect to employment for those entities. The members of the joint account may share the cost of benefits, including extended duration benefits and federal-state extended benefits, paid based on the base period wages with respect to employment for those members and charged to the joint account in the manner provided by Section 1026. The director shall prescribe authorized regulations for the establishment, maintenance, and dissolution of joint accounts, and for the rate or amount, time, manner, and method of payment or advance payment or providing a good and sufficient bond to guarantee payment of contributions by the members of joint accounts, on the cost of benefits charged in the manner provided by Section 1026.

(c) Sections 1030, 1031, 1032, and 1032.5, and any provision of this division for the noncharging of benefits to the account of an employer, shall not apply to an election under subdivision (b). The cost of benefits charged to an entity under this section shall

include, but not be limited to, benefits or payments improperly paid in excess of a weekly benefit amount, or in excess of a maximum benefit amount, or otherwise in excess of the amount that should have been paid, due to any computational or other error of any type by the Employment Development Department or the Department of Benefit Payments, whether or not the error could be anticipated.

(d) The cost of benefits charged to an entity under this section shall include credits of benefit overpayments actually collected by the department, unless the department determines that the payment was made because the entity, or an agent of the entity, was at fault for failing to respond timely or adequately to requests of the department for information relating to the individual claim for unemployment compensation benefits. The department shall make this determination when the entity or agent fails to respond timely or adequately in two instances relating to the individual claim for unemployment compensation benefits. This subdivision shall apply to benefit overpayments established on or after October 22, 2013.

(e) In making the payments prescribed by subdivision (b), there shall be paid or credited to the Unemployment Fund, either in advance or by way of reimbursement, as may be determined by the director, any sums he or she estimates the Unemployment Fund will be entitled to receive from each entity for each calendar quarter, reduced or increased by any sum by which he or she finds that his or her estimates for any prior calendar quarter were greater or less than the amounts which should have been paid to the fund. The estimates may be made upon the basis of statistical sampling, or any other method as may be determined by the director.

Upon making that determination, the director shall give notice of the determination, pursuant to Section 1206, to the entity. The director may cancel any contributions or portion thereof that he or she finds has been erroneously determined.

The director shall charge to any special fund, that is responsible for the salary of any employee of an entity, the amount determined by the director for which the fund is liable pursuant to this section. The contributions due from the entity shall be paid from the liable special fund, the General Fund, or other liable fund to the Unemployment Fund by the Controller or other officer or person responsible for disbursements on behalf of the entity within 30 days of the date of mailing of the director's notice of determination

to the entity. The director for good cause may extend for not to exceed 60 days the time for paying without penalty the amount determined and required to be paid. Contributions are due upon the date of mailing of the notice of determination and are delinquent if not paid on or before the 30th day following the date of mailing of the notice.

(f) Any entity that fails to pay the contributions required within the time required shall be liable for interest on the contributions at the adjusted annual rate and by the method established pursuant to Section 19521 of the Revenue and Taxation Code from and after the date of delinquency until paid, and any entity that without good cause fails to pay any contributions required within the time required shall pay a penalty of 10 percent of the amount of the contributions. If the entity fails to pay the contributions required on or before the delinquency date, the director may assess the entity for the amount required by the notice of determination. This subdivision shall not apply to employers electing financing under Section 821, for amounts due after December 31, 1992.

(g) Article 8 (commencing with Section 1126) of Chapter 4 of Part 1 with respect to the assessment of contributions, and Chapter 7 (commencing with Section 1701) of Part 1 with respect to the collection of contributions, shall apply to the assessments provided by this section. Sections 1177 to 1184, inclusive, relating to refunds and overpayments, shall apply to amounts paid to the Unemployment Fund pursuant to this section. Sections 1222, 1223, 1224, 1241, and 1242 shall apply to matters arising under this section.

(h) (1) The director may terminate the election of any entity for financing under this section if the entity is delinquent in the payment of advances or reimbursements required by the director under this section. After any termination the entity may again make an election pursuant to this section but only if it is not delinquent in the payment of contributions and not delinquent in the payment of advances or reimbursements required by the director under this section.

(2) In the case of an Indian tribe (as described by subsection (u) of Section 3306 of Title 26 of the United States Code), the director shall terminate all elections for the tribe and all subdivisions, subsidiaries, and business enterprises wholly owned by that tribe if the tribe or any subdivision, subsidiary, or business enterprise

wholly owned by that tribe is more than 90 days delinquent in the payment of contributions, bonds, advances, reimbursements, or applicable penalties or interest required under this code, after notice to the tribe. After any termination the Indian tribe may again make an election pursuant to this section but only if it is not delinquent in the payment of contributions, bonds, advances, reimbursements, or applicable penalties or interest required under this code.

(i) Notwithstanding any other provision of this section, no entity shall be liable for that portion of any extended duration benefits or federal-state extended benefits that is reimbursed or reimbursable by the federal government to the State of California.

(j) After the termination of any election under this section, the entity shall remain liable for its proportionate share of the cost of benefits paid and charged to its account in the manner provided by Section 1026, which are based on wages paid for services during the period of the election. That liability may be charged against any remaining balance of a prior reserve account used by the entity pursuant to Section 712 or 713. Any portion of the remaining balance shall be included in the reserve account of the entity following any termination of an election under this section which occurs prior to the expiration of a period of three consecutive years commencing with the effective date of the election. For purposes of Section 982, the period of an election under Section 803 shall, to the extent permitted by federal law, be included as a period during which a reserve account has been subject to benefit charges.

SEC. 2. Section 821 of the Unemployment Insurance Code is amended to read:

821. (a) Each school employer may, in lieu of the contributions required of employers, elect to pay into the Unemployment Fund the cost of benefits, including extended duration benefits and federal-state extended benefits, paid based on base period wages with respect to employment for an employing unit and charged to its account in the manner provided by Section 1026, pursuant to authorized regulations that shall prescribe the rate or amount, time, manner, and method of payment or advance payment or providing a good and sufficient bond to guarantee payment of contributions. The provisions of this article shall apply to school employers who have elected financing under this section.

(b) Sections 1030, 1031, 1032, and 1032.5, and any provision of this division for the noncharging of benefits to the account of

an employer, shall not apply to an employing unit under subdivision (a). The cost of benefits charged to a school employer under this section shall include, but not be limited to, benefits or payments improperly paid in excess of a weekly benefit amount, or in excess of a maximum benefit amount, or otherwise in excess of the amount that should have been paid, due to any computational or other error of any type by the Employment Development Department or the Department of Benefit Payments, whether or not the error could be anticipated.

(c) The cost of benefits charged to a school employer under this section shall include credits of benefit overpayments actually collected by the department, unless the department determines that the payment was made because the school employer, or an agent of the school employer, was at fault for failing to respond timely or adequately to requests of the department for information relating to the individual claim for unemployment compensation benefits. The department shall make this determination when the school employer or agent fails to respond timely or adequately in two instances relating to the individual claim for unemployment compensation benefits. This subdivision shall apply to benefit overpayments established on or after October 22, 2013.

(d) In making the payments prescribed by subdivision (a), there shall be paid or credited to the Unemployment Fund, either in advance or by way of reimbursement, as may be determined by the director, any sums he or she estimates the Unemployment Fund will be entitled to receive from each employing unit for each calendar quarter, reduced or increased by any sum by which he or she finds that his or her estimates for any prior calendar quarter were greater or less than the amounts that should have been paid to the fund. These estimates may be made upon the basis of a statistical sampling, or other method as may be determined by the director.

Upon making the determination, the director shall mail notice of the determination, pursuant to Section 1206, to the employing unit.

The director may cancel any contributions or portion thereof that he or she finds have been erroneously determined. The contributions due from the employing units shall be paid, transferred, or credited from the School Employees Fund established in the State Treasury by Section 822 to the

Unemployment Fund by the State Treasurer, State Controller, or other officer or person responsible for disbursements on behalf of the employing unit within 30 days of the date of mailing of the director's notice of determination to the employing unit.

Each employing unit shall send a copy of any and all notices, billings, or correspondence not normally routed to the administrator and the Superintendent of Public Instruction, regarding unemployment insurance for the school employees, to the administrator, the Superintendent of Public Instruction, and the county superintendent of schools, or agent thereof, with timely documentation of charges or determination. Article 8 (commencing with Section 1126) of Chapter 4 with respect to the assessment of contributions, and Chapter 7 (commencing with Section 1701) with respect to the collection of contributions, shall apply to the assessments provided by this article. Sections 1177 to 1184, inclusive, relating to refunds and overpayments, shall apply to amounts paid to the Unemployment Fund pursuant to this section. Sections 1222, 1223, 1224, 1241, and 1242 shall apply to matters arising under this section.

(e) Notwithstanding any other provision of this section, no employing unit shall be liable for that portion of any extended duration benefits or federal-state extended benefits that is reimbursed or reimbursable by the federal government to the state.

(f) To the extent permitted by federal law, including Section 121(e) of Public Law 94-566, any school employer that elects a method of financing under this article shall not be liable to reimburse the cost of benefits paid to any individual whose base period wages include wages for services performed prior to January 1, 1978, if the benefits are reimbursable by the federal government under Section 121 of Public Law 94-566 and to the extent that the individual would not have been eligible for the benefits had this state not provided for benefits payable based on services performed prior to January 1, 1978.

(g) The administrator and the Superintendent of Public Instruction shall adopt rules and regulations for the administration of their respective functions under this article in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. Regulations of the administrator shall be subject to Article 1 (commencing with Section 301) of Chapter 2 of Part 1 of Division 1. Rules and

regulations of the Superintendent of Public Instruction shall not be subject to the provisions of Article 1 (commencing with Section 301) of Chapter 2 of Part 1 of Division 1.

(h) Any election for financing coverage under this section shall take effect with respect to services performed from and after the first day of the calendar quarter in which the election is filed with the director, and shall continue in effect for not less than two full calendar years. Thereafter, the election under this section may be terminated as of January 1 of any calendar year only if the school employer, on or before the 31st day of January of that year, has filed with the director a written application for termination. The director may for good cause waive the requirement that a written application for termination shall be filed on or before the 31st day of January. School employers shall be prohibited from making a subsequent reelection under this section for 10 years from the date of termination of an election under this section. An election for financing coverage under this section is deemed to have been filed by every school employer effective as of January 1, 1976, is deemed to have been in effect for two calendar years prior to January 1, 1978, and may be terminated as of January 1, 1978, or as of January 1, 1980, or any later January 1 pursuant to this section. Upon the termination of any election under this section, the school employer shall be and remain liable for all benefits paid based upon wages paid by the school employer during the period of an election under this section.

SEC. 3. Section 1026.1 is added to the Unemployment Insurance Code, to read:

1026.1. Notwithstanding any other provision of this code, an employer's reserve account shall not be relieved of charges relating to a benefit overpayment if the department determines that the payment was made because the employer, or an agent of the employer, was at fault for failing to respond timely or adequately to requests of the department for information relating to the individual claim for unemployment compensation benefits. The department shall make this determination when the employer or agent fails to respond timely or adequately in two instances relating to the individual claim for unemployment compensation benefits. This section shall apply to benefit overpayments established on or after October 22, 2013.

SEC. 4. Section 1030 of the Unemployment Insurance Code is amended to read:

1030. (a) An employer that is entitled under Section 1327 to receive notice of the filing of a new or additional claim may, within 10 days after mailing of the notice, submit to the department any facts within its possession disclosing whether the claimant left the employer's employ voluntarily and without good cause or left under one of the following circumstances:

(1) The claimant was discharged from the employment for misconduct connected with his or her work.

(2) The claimant's discharge or quitting from his or her most recent employer was the result of an irresistible compulsion to use or consume intoxicants including alcoholic beverages.

(3) The claimant was a student employed on a temporary basis and whose employment began within, and ended with his or her leaving to return to school at the close of, his or her vacation period.

(4) The claimant left the employer's employ to accompany his or her spouse or domestic partner to a place or to join him or her at a place from which it is impractical to commute to the employment, and to which a transfer of the claimant by the employer is not available.

(5) The claimant left the employer's employ to protect his or her family or himself or herself from domestic violence abuse.

(6) The claimant left the employer's employ to take a substantially better job.

The period during which the employer may submit these facts may be extended by the director for good cause.

(b) A base period employer that is not entitled under Section 1327 to receive notice of the filing of a new or additional claim and is entitled under Section 1329 to receive notice of computation may, within 15 days after mailing of the notice of computation, submit to the department any facts within its possession disclosing whether the claimant left the employer's employ voluntarily and without good cause or left under one of the following circumstances:

(1) The claimant was discharged from the employment for misconduct connected with his or her work.

(2) The claimant was a student employed on a temporary basis and whose employment began within, and ended with his or her

leaving to return to school at the close of, his or her vacation period.

(3) The claimant left the employer's employ to accompany his or her spouse or domestic partner to a place or join him or her at a place from which it is impractical to commute to the employment, and to which a transfer of the claimant by the employer is not available.

(4) The claimant left the employer's employ to protect his or her family or himself or herself from domestic violence abuse.

(5) The claimant left the employer's employ to take a substantially better job.

The period during which the employer may submit these facts may be extended by the director for good cause.

(c) The department shall consider these facts together with any information in its possession. If the employer is entitled to a ruling under subdivision (b) or to a determination under Section 1328, the department shall promptly notify the employer of its ruling as to the cause of the termination of the claimant's employment. The employer may appeal from a ruling or reconsidered ruling to an administrative law judge within 20 days after mailing or personal service of notice of the ruling or reconsidered ruling. The 20-day period may be extended for good cause, which includes, but is not limited to, mistake, inadvertence, surprise, or excusable neglect. The director is an interested party to an appeal. The department may for good cause reconsider a ruling or reconsidered ruling within either five days after the date an appeal to an administrative law judge is filed or, if an appeal is not filed, within 20 days after mailing or personal service of notice of the ruling or reconsidered ruling. However, a ruling or reconsidered ruling that relates to a determination that is reconsidered pursuant to subdivision (a) of Section 1332 may also be reconsidered by the department within the time provided for reconsideration of that determination.

(d) For purposes of this section only, if the claimant voluntarily leaves the employer's employ without notification to the employer of the reasons for the leaving, and if the employer submits all of the facts within its possession concerning the leaving within the applicable time period referred to in this section, the leaving is presumed to be without good cause.

(e) An individual whose employment is terminated under the compulsory retirement provisions of a collective bargaining

agreement to which the employer is a party shall not be deemed to have voluntarily left his or her employment without good cause.

(f) For purposes of this section "spouse" includes a person to whom marriage is imminent, and "domestic partner" includes a person to whom a domestic partnership, as described in Section 297 of the Family Code, is imminent.

SEC. 5. Section 1032 of the Unemployment Insurance Code is amended to read:

1032. If it is ruled under Section 1030 or 1328 that the claimant left the employer's employ voluntarily and without good cause, or left under one of the following circumstances, benefits paid to the claimant subsequent to the termination of employment that are based upon wages earned from the employer prior to the date of the termination of employment shall not be charged to the account of the employer, except as provided by Section 1026 or if the department determines pursuant to Section 1026.1 that the employer's reserve account should not be credited, unless the employer failed to furnish the information specified in Section 1030 within the time limit prescribed in that section or unless that ruling is reversed by a reconsidered ruling:

(a) The claimant was discharged by reason of misconduct connected with his or her work.

(b) The claimant was a student employed on a temporary basis and whose employment began within, and ended with his or her leaving to return to school at the close of, his or her vacation period.

(c) The claimant left the employer's employ to accompany his or her spouse or domestic partner to a place or to join him or her at a place from which it is impractical to commute to the employment, and to which a transfer of the claimant by the employer is not available.

(d) The claimant left the employer's employ to protect his or her family or himself or herself from domestic violence abuse.

(e) The claimant left the employer's employ to take a substantially better job.

(f) The claimant's discharge or quitting from his or her most recent employer was the result of an irresistible compulsion to use or consume intoxicants including alcoholic beverages.

(g) For purposes of this section "spouse" includes a person to whom marriage is imminent, and "domestic partner" includes a

person to whom a domestic partnership, as described in Section 297 of the Family Code, is imminent.

SEC. 6. Section 1032.5 of the Unemployment Insurance Code is amended to read:

1032.5. (a) Any base period employer may, within 15 days after mailing of a notice of computation under subdivision (a) of Section 1329, submit to the department facts within its possession disclosing that the individual claiming benefits is rendering services for that employer in less than full-time work, and that the individual has continuously, commencing in or prior to the beginning of the base period, rendered services for that employer in such less than full-time work.

(b) The department shall consider facts submitted under subdivision (a) of this section together with any information in its possession and promptly notify the employer of its ruling. If the department finds that an individual is, under Section 1252, unemployed in any week on the basis of his or her having less than full-time work, and that the employer submitting facts under this section is a base period employer for whom the individual has continuously, commencing in or prior to the beginning of the base period, rendered services in such less than full-time work, that employer's account shall not be charged, except as provided by Section 1026 or if the department determines pursuant to Section 1026.1 that the employer's reserve account should not be credited, for benefits paid the individual in any week in which such wages are payable by that employer to the individual. The employer may appeal from a ruling or reconsidered ruling to an administrative law judge within 20 days after mailing or personal service of notice of the ruling or reconsidered ruling. The 20-day period may be extended for good cause, which shall include, but not be limited to, mistake, inadvertence, surprise, or excusable neglect. The director shall be an interested party to any appeal. The department may for good cause reconsider any ruling or reconsidered ruling within either five days after an appeal to an administrative law judge is filed or, if no appeal is filed, within 20 days after mailing or personal service of the notice of the ruling or reconsidered ruling.

SEC. 7. Section 1088.5 of the Unemployment Insurance Code is amended to read:

1088.5. (a) In addition to information reported in accordance with Section 1088, effective July 1, 1998, each employer shall file, with the department, the information provided for in subdivision (b) on new employees.

(b) Each employer shall report the hiring of any employee who works in this state and to whom the employer anticipates paying wages, and also shall report the hiring of any employee who previously worked for the employer but had been separated from that prior employment for at least 60 consecutive days.

(c) (1) This section shall not apply to any department, agency, or instrumentality of the United States.

(2) State agency employers shall not be required to report employees performing intelligence or counterintelligence functions, if the head of the agency has determined that reporting pursuant to this section would endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(d) (1) Employers shall submit a report as described in paragraph (4) within 20 days of hiring any employee whom the employer is required to report pursuant to this section.

(2) Notwithstanding subdivision (a), employers transmitting reports magnetically or electronically shall submit the report by two monthly transmissions not less than 12 days and not more than 16 days apart.

(3) For purposes of this section, an employer that has employees in two or more states and that transmits reports magnetically or electronically may designate one state in which the employer has employees to which the employer will transmit the report described in paragraph (4). Any employer that transmits reports pursuant to this paragraph shall notify the Secretary of Health and Human Services in writing as to which state the employer designates for the purpose of sending reports.

(4) The report shall contain the following:

(A) The name, address, and social security number of the employees.

(B) The employer's name, address, state employer identification number (if one has been issued), and identifying number assigned to the employer under Section 6109 of the Internal Revenue Code of 1986.

(C) The first date the employee worked.

(5) Employers may report pursuant to this section by submitting a copy of the employee's W-4 form, a form provided by the department, or any other hiring document transmitted by first-class mail, magnetically, or electronically.

(e) For each failure to report the hiring of an employee, as required and within the time required by this section, unless the failure is due to good cause, the department may assess a penalty of twenty-four dollars ($24), or four hundred ninety dollars ($490) if the failure is the result of conspiracy between the employer and employee not to supply the required report or to supply a false or incomplete report.

(f) Information collected pursuant to this section may be used for the following purposes:

(1) Administration of this code.

(2) Locating individuals for purposes of establishing paternity and establishing, modifying, and enforcing child support obligations.

(3) Administration of employment security and workers' compensation programs.

(4) Providing employer or employee information to the Franchise Tax Board and the State Board of Equalization for the purpose of tax or fee enforcement.

(5) Verification of eligibility of applicants for, or recipients of, the public assistance programs listed in Section 1320b-7(b) of Title 42 of the United States Code.

(g) For purposes of this section, "employer" includes a labor union hiring hall.

(h) This section shall become operative on July 1, 1998.

SEC. 7.1. Section 1088.5 of the Unemployment Insurance Code is amended to read:

1088.5. (a) In addition to information reported in accordance with Section 1088, effective July 1, 1998, each employer shall file, with the department, the information provided for in subdivision (b) on new employees.

(b) Each employer shall report the hiring of any employee who works in this state and to whom the employer anticipates paying wages, and also shall report the hiring of any employee who previously worked for the employer but had been separated from that prior employment for at least 60 consecutive days.

(c) (1) This section shall not apply to any department, agency, or instrumentality of the United States.

(2) State agency employers shall not be required to report employees performing intelligence or counterintelligence functions, if the head of the agency has determined that reporting pursuant to this section would endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(d) (1) Employers shall submit a report as described in paragraph (4) within 20 days of hiring any employee whom the employer is required to report pursuant to this section.

(2) Notwithstanding subdivision (a), employers transmitting reports magnetically or electronically shall submit the report by two monthly transmissions not less than 12 days and not more than 16 days apart.

(3) For purposes of this section, an employer that has employees in two or more states and that transmits reports magnetically or electronically may designate one state in which the employer has employees to which the employer will transmit the report described in paragraph (4). Any employer that transmits reports pursuant to this paragraph shall notify the Secretary of Health and Human Services in writing as to which state the employer designates for the purpose of sending reports.

(4) The report shall contain the following:

(A) The name, address, and social security number of the employees.

(B) The employer's name, address, state employer identification number (if one has been issued), and identifying number assigned to the employer under Section 6109 of the Internal Revenue Code of 1986.

(C) The first date the employee worked.

(5) Employers may report pursuant to this section by submitting a copy of the employee's W-4 form, a form provided by the department, or any other hiring document transmitted by first-class mail, magnetically, or electronically.

(e) For each failure to report the hiring of an employee, as required and within the time required by this section, unless the failure is due to good cause, the department may assess a penalty of twenty-four dollars ($24), or four hundred ninety dollars ($490) if the failure is the result of conspiracy between the employer and

employee not to supply the required report or to supply a false or incomplete report.

(f) Information collected pursuant to this section may be used for the following purposes:

(1) Administration of this code.

(2) Locating individuals for purposes of establishing paternity and establishing, modifying, and enforcing child support obligations.

(3) Administration of employment security and workers' compensation programs.

(4) Providing employer or employee information to the Franchise Tax Board and the State Board of Equalization for the purpose of tax or fee enforcement.

(5) Verification of eligibility of applicants for, or recipients of, the public assistance programs listed in Section 1320b-7(b) of Title 42 of the United States Code.

(6) Providing employer or employee information to the State Department of Health Care Services, the California Health Benefit Exchange, the Managed Risk Medical Insurance Board, and county departments and agencies for the purpose of:

(A) Verifying or determining the eligibility of an applicant for, or a recipient of, state health subsidy programs, limited to the Medi-Cal program, provided pursuant to Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code, the Healthy Families Program, provided pursuant to Part 6.2 (commencing with Section 12693) of Division 2 of the Insurance Code, and the Access for Infants and Mothers Program, provided pursuant to Part 6.3 (commencing with Section 12695) of Division 2 of the Insurance Code, where the verification or determination is directly connected with, and limited to, the administration of the state health subsidy programs referenced in this subparagraph.

(B) Verifying or determining the eligibility of an applicant for, or a recipient of, federal subsidies offered through the California Health Benefit Exchange, provided pursuant to Title 22 (commencing with Section 100500) of the Government Code, including federal tax credits and cost-sharing assistance pursuant to the federal Patient Protection and Affordable Care Act, (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), where

the verification or determination is directly connected with, and limited to, the administration of the California Health Benefit Exchange.

(C) Verifying or determining the eligibility of employees and employers for health coverage through the Small Business Health Options Program, provided pursuant to Section 100502 of the Government Code, where the verification or determination is directly connected with, and limited to the administration of the Small Business Health Options Program.

(g) For purposes of this section, "employer" includes a labor union hiring hall.

(h) This section shall become operative on July 1, 1998.

SEC. 7.2. Section 1088.5 of the Unemployment Insurance Code is amended to read:

1088.5. (a) In addition to information reported in accordance with Section 1088, effective July 1, 1998, each employer shall file, with the department, the information provided for in subdivision (b) on new employees.

(b) Each employer shall report the hiring of any employee who works in this state and to whom the employer anticipates paying wages, and also shall report the hiring of any employee who previously worked for the employer but had been separated from that prior employment for at least 60 consecutive days.

(c) (1) This section shall not apply to any department, agency, or instrumentality of the United States.

(2) State agency employers shall not be required to report employees performing intelligence or counterintelligence functions, if the head of the agency has determined that reporting pursuant to this section would endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(d) (1) Employers shall submit a report as described in paragraph (4) within 20 days of hiring any employee whom the employer is required to report pursuant to this section.

(2) Notwithstanding subdivision (a), employers transmitting reports magnetically or electronically shall submit the report by two monthly transmissions not less than 12 days and not more than 16 days apart.

(3) For purposes of this section, an employer that has employees in two or more states and that transmits reports magnetically or electronically may designate one state in which the employer has

employees to which the employer will transmit the report described in paragraph (4). Any employer that transmits reports pursuant to this paragraph shall notify the Secretary of Health and Human Services in writing as to which state the employer designates for the purpose of sending reports.

(4) The report shall contain the following:

(A) The name, address, and social security number of the employees.

(B) The employer's name, address, state employer identification number (if one has been issued), and identifying number assigned to the employer under Section 6109 of the Internal Revenue Code of 1986.

(C) The first date the employee worked.

(5) Employers may report pursuant to this section by submitting a copy of the employee's W-4 form, a form provided by the department, or any other hiring document transmitted by first-class mail, magnetically, or electronically.

(e) For each failure to report the hiring of an employee, as required and within the time required by this section, unless the failure is due to good cause, the department may assess a penalty of twenty-four dollars ($24), or four hundred ninety dollars ($490) if the failure is the result of conspiracy between the employer and employee not to supply the required report or to supply a false or incomplete report.

(f) (1) On and after January 1, 2013, and before January 1, 2019, information collected pursuant to this section may be used for the following purposes:

(A) Administration of this code, including, but not limited to, providing employer or employee information to participating members of the Joint Enforcement Strike Force on the Underground Economy pursuant to Section 329 for the purposes of auditing, investigating, and prosecuting violations of tax and cash-pay reporting laws.

(B) Locating individuals for purposes of establishing paternity and establishing, modifying, and enforcing child support obligations.

(C) Administration of employment security and workers' compensation programs.

(D) Providing employer or employee information to the Franchise Tax Board and the State Board of Equalization for the purpose of tax or fee enforcement.

(E) Verification of eligibility of applicants for, or recipients of, the public assistance programs listed in Section 1320b-7(b) of Title 42 of the United States Code.

(F) Providing employer or employee information to the Contractors' State License Board and the State Compensation Insurance Fund for the purpose of workers' compensation payroll reporting.

(2) On and after January 1, 2019, information collected pursuant to this section may be used for the following purposes:

(A) Administration of this code.

(B) Locating individuals for purposes of establishing paternity and establishing, modifying, and enforcing child support obligations.

(C) Administration of employment security and workers' compensation programs.

(D) Providing employer or employee information to the Franchise Tax Board and to the State Board of Equalization for the purposes of tax or fee enforcement.

(E) Verification of eligibility of applicants for, or recipients of, the public assistance programs listed in Section 1320b-7(b) of Title 42 of the United States Code.

(g) For purposes of this section, "employer" includes a labor union hiring hall.

(h) This section shall become operative on July 1, 1998.

SEC. 7.3. Section 1088.5 of the Unemployment Insurance Code is amended to read:

1088.5. (a) In addition to information reported in accordance with Section 1088, effective July 1, 1998, each employer shall file, with the department, the information provided for in subdivision (b) on new employees.

(b) Each employer shall report the hiring of any employee who works in this state and to whom the employer anticipates paying wages, and also shall report the hiring of any employee who previously worked for the employer but had been separated from that prior employment for at least 60 consecutive days.

(c) (1) This section shall not apply to any department, agency, or instrumentality of the United States.

(2) State agency employers shall not be required to report employees performing intelligence or counterintelligence functions, if the head of the agency has determined that reporting pursuant to this section would endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(d) (1) Employers shall submit a report as described in paragraph (4) within 20 days of hiring any employee whom the employer is required to report pursuant to this section.

(2) Notwithstanding subdivision (a), employers transmitting reports magnetically or electronically shall submit the report by two monthly transmissions not less than 12 days and not more than 16 days apart.

(3) For purposes of this section, an employer that has employees in two or more states and that transmits reports magnetically or electronically may designate one state in which the employer has employees to which the employer will transmit the report described in paragraph (4). Any employer that transmits reports pursuant to this paragraph shall notify the Secretary of Health and Human Services in writing as to which state the employer designates for the purpose of sending reports.

(4) The report shall contain the following:

(A) The name, address, and social security number of the employees.

(B) The employer's name, address, state employer identification number (if one has been issued), and identifying number assigned to the employer under Section 6109 of the Internal Revenue Code of 1986.

(C) The first date the employee worked.

(5) Employers may report pursuant to this section by submitting a copy of the employee's W-4 form, a form provided by the department, or any other hiring document transmitted by first-class mail, magnetically, or electronically.

(e) For each failure to report the hiring of an employee, as required and within the time required by this section, unless the failure is due to good cause, the department may assess a penalty of twenty-four dollars ($24), or four hundred ninety dollars ($490) if the failure is the result of conspiracy between the employer and employee not to supply the required report or to supply a false or incomplete report.

(f) (1) On and after January 1, 2013, and before January 1, 2019, information collected pursuant to this section may be used for the following purposes:

(A) Administration of this code, including, but not limited to, providing employer or employee information to participating members of the Joint Enforcement Strike Force on the Underground Economy pursuant to Section 329 for the purposes of auditing, investigating, and prosecuting violations of tax and cash-pay reporting laws.

(B) Locating individuals for purposes of establishing paternity and establishing, modifying, and enforcing child support obligations.

(C) Administration of employment security and workers' compensation programs.

(D) Providing employer or employee information to the Franchise Tax Board and the State Board of Equalization for the purpose of tax or fee enforcement.

(E) Verification of eligibility of applicants for, or recipients of, the public assistance programs listed in Section 1320b-7(b) of Title 42 of the United States Code.

(F) Providing employer or employee information to the Contractors' State License Board and the State Compensation Insurance Fund for the purpose of workers' compensation payroll reporting.

(G) Providing employer or employee information to the State Department of Health Care Services, the California Health Benefit Exchange, the Managed Risk Medical Insurance Board, and county departments and agencies for the purpose of:

(i) Verifying or determining the eligibility of an applicant for, or a recipient of, state health subsidy programs, limited to the Medi-Cal program, provided pursuant to Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code, the Healthy Families Program, provided pursuant to Part 6.2 (commencing with Section 12693) of Division 2 of the Insurance Code, and the Access for Infants and Mothers Program, provided pursuant to Part 6.3 (commencing with Section 12695) of Division 2 of the Insurance Code, where the verification or determination is directly connected with, and limited to, the administration of the state health subsidy programs referenced in this clause.

(ii) Verifying or determining the eligibility of an applicant for, or a recipient of, federal subsidies offered through the California Health Benefit Exchange, provided pursuant to Title 22 (commencing with Section 100500) of the Government Code, including federal tax credits and cost-sharing assistance pursuant to the federal Patient Protection and Affordable Care Act, (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), where the verification or determination is directly connected with, and limited to, the administration of the California Health Benefit Exchange.

(iii) Verifying or determining the eligibility of employees and employers for health coverage through the Small Business Health Options Program, provided pursuant to Section 100502 of the Government Code, where the verification or determination is directly connected with, and limited to the administration of the Small Business Health Options Program.

(2) On and after January 1, 2019, information collected pursuant to this section may be used for the following purposes:

(A) Administration of this code.

(B) Locating individuals for purposes of establishing paternity and establishing, modifying, and enforcing child support obligations.

(C) Administration of employment security and workers' compensation programs.

(D) Providing employer or employee information to the Franchise Tax Board and to the State Board of Equalization for the purposes of tax or fee enforcement.

(E) Verification of eligibility of applicants for, or recipients of, the public assistance programs listed in Section 1320b-7(b) of Title 42 of the United States Code.

(F) Providing employer or employee information to the State Department of Health Care Services, the California Health Benefit Exchange, the Managed Risk Medical Insurance Board, and county departments and agencies for the purpose of:

(i) Verifying or determining the eligibility of an applicant for, or a recipient of, state health subsidy programs, limited to the Medi-Cal program, provided pursuant to Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code, the Healthy Families Program, provided pursuant

to Part 6.2 (commencing with Section 12693) of Division 2 of the Insurance Code, and the Access for Infants and Mothers Program, provided pursuant to Part 6.3 (commencing with Section 12695) of Division 2 of the Insurance Code, where the verification or determination is directly connected with, and limited to, the administration of the state health subsidy programs referenced in this clause.

(ii) Verifying or determining the eligibility of an applicant for, or a recipient of, federal subsidies offered through the California Health Benefit Exchange, provided pursuant to Title 22 (commencing with Section 100500) of the Government Code, including federal tax credits and cost-sharing assistance pursuant to the federal Patient Protection and Affordable Care Act, (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), where the verification or determination is directly connected with, and limited to, the administration of the California Health Benefit Exchange.

(iii) Verifying or determining the eligibility of employees and employers for health coverage through the Small Business Health Options Program, provided pursuant to Section 100502 of the Government Code, where the verification or determination is directly connected with, and limited to the administration of the Small Business Health Options Program.

(g) For purposes of this section, “employer” includes a labor union hiring hall.

(h) This section shall become operative on July 1, 1998.

SEC. 8. Section 1142 of the Unemployment Insurance Code is amended to read:

1142. (a) If the director finds that any employer or any employee, officer, or agent of any employer, in submitting facts concerning the termination of a claimant’s employment pursuant to Section 1030, 1327, 3654, 3701, 4654, or 4701, willfully makes a false statement or representation or willfully fails to report a material fact concerning that termination, the director shall assess a penalty of an amount not less than 2 nor more than 10 times the weekly benefit amount of that claimant. The director shall assess this penalty in the following manner:

(1) If the director finds that the employer was at fault for willfully making a false statement or representation or willfully

failing to report a material fact concerning that termination, the director shall assess the penalty against the employer.

(2) If the director finds that the agent of the employer was at fault for willfully making a false statement or representation or willfully failing to report a material fact concerning that termination, the director shall assess the penalty against the agent of the employer.

(3) If the director finds that the employer and the agent of the employer were both at fault for willfully making a false statement or representation or willfully failing to report a material fact concerning that termination, the director shall assess the penalty against the employer and also shall assess another penalty against the agent of the employer.

(b) If the director finds that any employer or any employee, officer, or agent of any employer, in submitting a written statement concerning the reasonable assurance, as defined in subdivision (g) of Section 1253.3, of a claimant's reemployment, as required by subdivisions (b), (c), and (i) of Section 1253.3, willfully makes a false statement or representation or willfully fails to report a material fact concerning the reasonable assurance of that reemployment, the director shall assess a penalty of an amount not less than 2 nor more than 10 times the weekly benefit amount of that claimant. The director shall assess this penalty in the following manner:

(1) If the director finds that the employer was at fault for willfully making a false statement or representation or willfully failing to report a material fact concerning the reasonable assurance of that reemployment, the director shall assess the penalty against the employer.

(2) If the director finds that the agent of the employer was at fault for willfully making a false statement or representation or willfully failing to report a material fact concerning the reasonable assurance of that reemployment, the director shall assess the penalty against the agent of the employer.

(3) If the director finds that the employer and the agent of the employer were both at fault for willfully making a false statement or representation or willfully failing to report a material fact concerning the reasonable assurance of that reemployment, the director shall assess the penalty against the employer and also shall assess another penalty against the agent of the employer.

(c) (1) This article, Article 9 (commencing with Section 1176) of this chapter with respect to refunds, and Chapter 7 (commencing with Section 1701) of this part with respect to collections shall apply to the assessments provided by this section. Penalties collected under this section shall be deposited in the contingent fund.

(2) Notwithstanding Section 1586, additional penalties that are assessed against an agent of the employer and collected pursuant to paragraph (3) of subdivision (a) and paragraph (3) of subdivision (b) shall be available for the purposes specified in Section 1586 upon appropriation by the Legislature for those purposes.

SEC. 9. Section 1329.1 of the Unemployment Insurance Code is amended to read:

1329.1. A claim for unemployment compensation benefits may be canceled if all of the following apply:

(a) The individual has not been deemed ineligible for unemployment compensation benefits.

(b) The individual has not been overpaid unemployment compensation benefits.

(c) The individual has not been paid unemployment compensation benefits.

(d) The individual requests to cancel the claim during the benefit year of that claim, or in the case of a claim for federal-state extended duration benefits, during the extended duration period of that claim.

SEC. 10. Section 1335 of the Unemployment Insurance Code is amended to read:

1335. If an appeal is filed, benefits with respect to the period prior to the final decision on the appeal shall be paid only after the decision, except that:

(a) If benefits for any week are payable in accordance with a determination by the department irrespective of any decision on the issues set forth in the appeal, such benefits shall be promptly paid regardless of such appeal.

(b) If an administrative law judge affirms a determination allowing benefits, such benefits shall be promptly paid regardless of any appeal which may thereafter be taken, and regardless of any action taken under Section 1336 or otherwise by the director, appeals board, or other administrative body or by any court.

If the determination is finally reversed, no employer's account shall be charged with benefits paid because of that determination, except as provided in Section 1026, or if the department determines pursuant to Section 1026.1 that the employer's reserve account should not be credited.

(c) If benefits for any week are payable in accordance with a determination by the department, or an administrative law judge issues a decision allowing benefits, the benefits shall be promptly paid regardless of any appeal, and regardless of any action taken by the appeals board pursuant to Section 412 or 413. If the determination of the department or the decision of the administrative law judge is finally reversed, no employer's reserve account shall be charged with benefits paid pursuant to this subdivision, except as provided in Section 1026 or if the department determines pursuant to Section 1026.1 that the employer's reserve account should not be credited.

SEC. 11. Section 1338 of the Unemployment Insurance Code is amended to read:

1338. If the appeals board issues a decision allowing benefits the benefits shall be paid regardless of any further action taken by the director, the appeals board, or any other administrative agency, and regardless of any appeal or mandamus, or other proceeding in the courts. If the decision of the appeals board is finally reversed or set aside, no employer's account shall be charged with the benefits paid pursuant to this section, except as provided in Section 1026, or if the department determines pursuant to Section 1026.1 that the employer's reserve account should not be credited.

SEC. 12. Section 1375.1 of the Unemployment Insurance Code is amended to read:

1375.1. If the director finds that an individual has been overpaid unemployment compensation benefits because he or she willfully, for the purpose of obtaining unemployment compensation benefits, either made a false statement or representation, with actual knowledge of the falsity thereof, or withheld a material fact, the director shall assess against the individual an amount equal to 30 percent of the overpayment amount. Assessments collected under this section shall be deposited in the following manner:

(a) For penalty assessments established prior to October 22, 2013, 100 percent of the overpayment penalty amount in the Benefit Audit Fund.

(b) For penalty assessments established on or after October 22, 2013, as follows:

(1) 50 percent of the overpayment penalty amount in the Unemployment Trust Fund.

(2) 50 percent of the overpayment penalty amount in the Benefit Audit Fund.

SEC. 13. Section 1381 of the Unemployment Insurance Code is amended to read:

1381. The director shall enforce collection of any judgment obtained by the director under subdivision (a) or (b) of Section 1379. Amounts collected under this section shall be deposited in the fund from which the overpayment was made, except that the amounts collected to offset the costs of collections shall be deposited in the Unemployment Administration Fund and the amounts collected pursuant to Section 1375.1 shall be deposited as specified in that section.

SEC. 14. Section 1521 of the Unemployment Insurance Code is amended to read:

1521. The Unemployment Fund is continued in existence as a special fund, separate and apart from all public money or funds of this state. This fund shall consist of (1) all employer contributions collected under this division; (2) interest earned upon any money in the fund; (3) any property or securities acquired through the use of money belonging to the fund; (4) all earnings of such property or securities; (5) all money credited to this state's account in the Unemployment Trust Fund pursuant to Section 903 of the Social Security Act, as amended; (6) all assessments collected pursuant to paragraph (1) of subdivision (b) of Section 1375.1; and (7) all other money received for the fund from any other source. All money in the fund shall be mingled and undivided.

Notwithstanding Section 13340 of the Government Code, all money in the Unemployment Fund and in the various accounts of that fund, except any money deposited pursuant to Section 1528.5, is continuously appropriated for the purposes authorized in this article.

SEC. 15. Section 1595 of the Unemployment Insurance Code is amended to read:

1595. There is in the State Treasury a special fund known as the Employment Development Department Benefit Audit Fund. There shall be deposited in, or transferred to, this fund those sums

as specified pursuant to Section 1375.1, except all interest collected shall be deposited in this fund.

SEC. 16. Section 3701 of the Unemployment Insurance Code is amended to read:

3701. (a) (1) An employer that is entitled under Section 3654 to notice of the filing of a primary claim or additional claim and that, within 10 days after mailing of the notice, submits to the department any facts within its possession disclosing whether the exhaustee left the most recent employment with the employer voluntarily and without good cause or was discharged from the employment for misconduct connected with his or her work, or whether the claimant was a student employed on a temporary basis and whose employment began within, and ended with his or her leaving to return to school at the close of, his or her vacation period, or whether the claimant left the employer's employ to accompany his or her spouse or domestic partner to a place or join him or her at a place from which it is impractical to commute to the employment, and to which a transfer of the claimant by the employer is not available, or whether the claimant's discharge or quit from his or her most recent employer was the result of an irresistible compulsion to use or consume intoxicants, including alcoholic beverages, or whether the claimant left the employer's employ to protect his or her family or himself or herself from domestic violence abuse, or whether the claimant left the employer's employ to take a substantially better job, shall be entitled to a ruling as prescribed by this section. The period during which the employer may submit these facts may be extended by the director for good cause.

(2) For purposes of this section, "spouse" includes a person to whom marriage is imminent, and "domestic partner" includes a person to whom a domestic partnership, as described in Section 297 of the Family Code, is imminent.

(b) The department shall consider these facts together with any information in its possession. If the employer is entitled to a determination pursuant to Section 3655, the department shall promptly notify the employer of its ruling as to the cause of the termination of the exhaustee's most recent employment. The employer may appeal from a ruling or reconsidered ruling to an administrative law judge within 20 days after mailing or personal service of notice of the ruling or reconsidered ruling. The 20-day

period may be extended for good cause, which shall include, but not be limited to, mistake, inadvertence, surprise, or excusable neglect. The director shall be an interested party to an appeal. The department may for good cause reconsider a ruling or reconsidered ruling within either five days after the date an appeal to an administrative law judge is filed or, if an appeal is not filed, within 20 days after mailing or personal service of notice of the ruling or reconsidered ruling, except that a ruling or reconsidered ruling which related to a determination that is reconsidered pursuant to subdivision (a) of Section 1332 may also be reconsidered by the department within the time provided for reconsideration of that determination.

(c) For purposes of this section only, if the claimant voluntarily leaves the employer's employ without notification to the employer of the reasons therefor, and if the employer submits all of the facts within its possession concerning the leaving within the applicable time period referred to in this section, the leaving shall be presumed to be without good cause.

(d) An individual whose employment is terminated under the compulsory retirement provisions of a collective bargaining agreement to which the employer is a party shall not be deemed to have voluntarily left his or her employment without good cause.

(e) Rulings under this section shall have the effect prescribed by Section 1032.

SEC. 17. Section 4701 of the Unemployment Insurance Code is amended to read:

4701. (a) (1) An employer that is entitled under Section 4654 to notice of the filing of an application or additional claim and who, within 10 days after mailing of the notice, submits to the department any facts within its possession disclosing whether the individual left the most recent employment with the employer voluntarily and without good cause or was discharged from the employment for misconduct connected with his or her work, or whether the claimant was a student employed on a temporary basis and whose employment began within, and ended with his or her leaving to return to school at the close of, his or her vacation period, or whether the claimant left the employer's employ to accompany his or her spouse or domestic partner to a place or to join him or her at a place from which it is impractical to commute to the employment, and to which a transfer of the claimant by the

employer is not available, or whether the claimant's discharge or quit from his or her most recent employer was the result of an irresistible compulsion to use or consume intoxicants, including alcoholic beverages, or whether the claimant left the employer's employ to protect his or her family or himself or herself from domestic violence abuse, or whether the claimant left the employer's employ to take a substantially better job, shall be entitled to a ruling as prescribed by this section. The period during which the employer may submit these facts may be extended by the director for good cause.

(2) For purposes of this section, "spouse" includes a person to whom marriage is imminent, and "domestic partner" includes a person to whom a domestic partnership, as described in Section 297 of the Family Code, is imminent.

(b) The department shall consider the facts together with any information in its possession. If the employer is entitled to a determination pursuant to Section 4655, the department shall promptly issue to the employer its ruling as to the cause of the termination of the individual's most recent employment. The employer may appeal from a ruling or reconsidered ruling to an administrative law judge within 20 days after mailing or personal service of notice of the ruling or reconsidered ruling. The 20-day period may be extended for good cause, which shall include, but not be limited to, mistake, inadvertence, surprise, or excusable neglect. The director shall be an interested party to an appeal. The department may for good cause reconsider a ruling or reconsidered ruling within either five days after the date an appeal to an administrative law judge is filed or, if no appeal is filed, within 20 days after mailing or personal service of notice of the ruling or reconsidered ruling, except that a ruling or reconsidered ruling that relates to a determination that is reconsidered pursuant to subdivision (a) of Section 1332 may also be reconsidered by the department within the time provided for reconsideration of that determination.

(c) For purposes of this section only, if the claimant voluntarily leaves the employer's employ without notification to the employer of the reasons therefor, and if the employer submits all of the facts within its possession concerning the leaving within the applicable time period referred to in this section, the leaving shall be presumed to be without good cause.

(d) An individual whose employment is terminated under the compulsory retirement provisions of a collective bargaining agreement to which the employer is a party shall not be deemed to have voluntarily left his or her employment without good cause.

(e) Rulings under this section shall have the effect prescribed by Section 1032.

SEC. 18. Section 13021 of the Unemployment Insurance Code is amended to read:

13021. (a) Every employer required to withhold any tax under Section 13020 shall for each calendar quarter, whether or not wages or payments are paid in the quarter, file a withholding report, a quarterly return, as prescribed in subdivision (a) of Section 1088, and a report of wages in a form prescribed by the department, and pay over the taxes so required to be withheld. The report of wages shall include individual amounts required to be withheld under Section 13020 or withheld under Section 13028. Except as provided in subdivisions (c) and (d), the employer shall file a withholding report, a quarterly return, as prescribed in subdivision (a) of Section 1088, and a report of wages, and remit the total amount of income taxes withheld during the calendar quarter on or before the last day of the month following the close of the calendar quarter.

(b) Every employer electing to file a single annual return under subdivision (d) of Section 1110 shall report and pay any taxes withheld under Section 13020 on an annual basis within the time specified in subdivision (d) of Section 1110.

(c) (1) Effective January 1, 1995, whenever an employer is required, for federal income tax purposes, to remit the total amount of withheld federal income tax in accordance with Section 6302 of the Internal Revenue Code and regulations thereunder, and the accumulated amount of state income tax withheld is more than five hundred dollars ($500), the employer shall remit the total amount of income tax withheld for state income tax purposes within the number of business days as specified for withheld federal income taxes by Section 6302 of the Internal Revenue Code, and regulations thereunder.

(2) Effective January 1, 1996, the five hundred dollar ($500) amount referred to in paragraph (1) shall be adjusted annually as follows, based on the annual average rate of interest earned on the Pooled Money Investment Account as of June 30 in the prior fiscal year:

Average Rate of Interest	
Greater than or equal to 9 percent:	$ 75
Less than 9 percent, but greater than or equal to 7 percent:	250
Less than 7 percent, but greater than or equal to 4 percent:	400
Less than 4 percent:	500

(d) (1) Notwithstanding subdivisions (a) and (c), for calendar years beginning prior to January 1, 1995, if in the 12-month period ending June 30 of the prior year the cumulative average payment made pursuant to this division or Section 1110, for eight-month periods, as defined under Section 6302 of the Internal Revenue Code and regulations thereunder, was fifty thousand dollars ($50,000) or more, the employer shall remit the total amount of income tax withheld within three banking days following the close of each eight-month period, as described by Section 6302 of the Internal Revenue Code and regulations thereunder. For purposes of this subdivision, payment shall be made by electronic funds transfer in accordance with Section 13021.5, for one calendar year beginning on January 1. Payment is deemed complete on the date the electronic funds transfer is initiated if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed complete on the date settlement occurs. The department shall, on or before October 31 of the prior year, notify all employers required to make payment by electronic funds transfer of these requirements.

(2) Notwithstanding subdivisions (a) and (c), for calendar years beginning on or after January 1, 1995, if in the 12-month period ending June 30 of the prior year, the cumulative average payment made pursuant to this division or Section 1110 for any deposit periods, as described under Section 6302 of the Internal Revenue Code and regulations thereunder, was twenty thousand dollars ($20,000) or more, the employer shall remit the total amount of income tax withheld within the number of business days as specified for federal income taxes by Section 6302 of the Internal Revenue Code and regulations thereunder. For purposes of this subdivision, payment shall be made by electronic funds transfer

in accordance with Section 13021.5, for one calendar year beginning on January 1. Payment is deemed complete on the date the electronic funds transfer is initiated if settlement to the state's demand account occurs on or before the business day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the business day following the date the transfer is initiated, payment is deemed complete on the date settlement occurs. The department shall, on or before October 31 of the prior year, notify all employers required by this paragraph to make payments by electronic funds transfer of these requirements.

(3) Notwithstanding paragraph (2), effective January 1, 1995, electronic funds transfer payments that are subject to the one-day deposit rule, as described by Section 6302 of the Internal Revenue Code and regulations thereunder, shall be deemed timely if the payment settles to the state's demand account within three business days after the date the employer meets the threshold for the one-day deposit rule.

(4) Any taxpayer required to remit payments pursuant to paragraphs (1) and (2) may request from the department a waiver of those requirements. The department may grant a waiver only if it determines that the particular amounts paid in excess of fifty thousand dollars ($50,000) or twenty thousand dollars ($20,000), as stated in paragraphs (1) and (2), respectively, were the result of an unprecedented occurrence for that employer, and were not representative of the employer's cumulative average payment in prior years.

(5) A state agency required to remit payments pursuant to paragraphs (1) and (2) may request a waiver of those requirements from the department. The department may grant a waiver if it determines that there will not be a negative impact on the interest earnings of the General Fund. If there is a negative impact to the General Fund, the department may grant a waiver if the requesting state agency follows procedures designated by the department to mitigate the impact to the General Fund.

(e) An employer not required to make payment pursuant to subdivision (d) may elect to make payment by electronic funds transfer in accordance with Section 13021.5 under the following conditions:

(1) The election shall be made in a form, and shall contain information, as prescribed by the director, and shall be subject to approval by the department.

(2) If approved, the election shall be effective on the date specified in the notification to the employer of approval.

(3) The election shall be operative from the date specified in the notification of approval, and shall continue in effect until terminated by the employer or the department.

(4) Funds remitted by electronic funds transfer pursuant to this subdivision shall be deemed complete in accordance with subdivision (d) or as deemed appropriate by the director to encourage use of this payment method.

(f) Notwithstanding Section 1112, interest and penalties shall not be assessed against an employer that remits at least 95 percent of the amount required by subdivision (c) or (d) if the failure to remit the full amount is not willful and any remaining amount due is paid with the next payment. The director may allow any employer to submit the amounts due from multiple locations upon a showing that those submissions are necessary to comply with subdivision (c) or (d).

(g) The department may, if it believes that action is necessary, require any employer to make the report or return required by this section and pay to it the tax deducted and withheld at any time, or from time to time but no less frequently than provided for in subdivision (a).

(h) An employer required to withhold any tax and that is not required to make payment under subdivision (c) shall remit the total amount of income tax withheld during each month of each calendar quarter, on or before the 15th day of the subsequent month if the income tax withheld for any of the three months or, cumulatively for two or more months, is three hundred fifty dollars ($350) or more.

(i) For purposes of subdivisions (a), (c), and (h), payment is deemed complete when it is placed in a properly addressed envelope, bearing the correct postage, and it is deposited in the United States mail.

(j) (1) In addition to the withholding report, quarterly return, and report of wages described in subdivision (a), each employer shall file with the director an annual reconciliation return showing the amount required to be withheld under Section 13020, and any

other information the director shall prescribe. This annual reconciliation return shall be due on the first day of January following the close of the prior calendar year and shall become delinquent if not filed on or before the last day of that month.

(2) The requirement to file the annual reconciliation return for the prior calendar year under this subdivision shall not apply to the 2012 calendar year and thereafter.

(k) The requirement in subdivision (a) to file a quarterly return shall begin with the first calendar quarter of the 2011 calendar year.

(*l*) The changes made to this section by the act adding this subdivision shall apply on and after January 1, 2013.

SEC. 19. Section 13021.5 of the Unemployment Insurance Code is amended to read:

13021.5. (a) "Electronic funds transfer" means a transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape, so as to order, instruct, or authorize a financial institution to debit or credit an account. Electronic funds transfers shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, Fedwire, or by other specific electronic funds transfer methods approved in advance by the department.

(b) "Automated clearinghouse" means a federal reserve bank, or an organization established in agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks and/or bank accounts and which authorizes an electronic transfer of funds between those banks or bank accounts.

(c) "Automated clearinghouse debit" means a transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the employer's bank account and crediting the state's bank account for the amount of tax. Banking costs incurred for the automated clearinghouse debit transaction shall be paid by the state.

(d) "Automated clearinghouse credit" means an automated clearinghouse transaction in which the employer, through its own bank, originates an entry crediting the state's bank account and debiting its own bank account. Banking costs incurred for the

automated clearinghouse credit transaction charged to the employer and to the state shall be paid by the employer.

(e) "Fedwire" means a transaction originated by the employer and utilizing the national electronic payment system to transfer funds through the federal reserve banks, pursuant to which the employer debits its own bank account and credits the state's bank account. Electronic funds transfer payments may be made by Fedwire only if prior approval is obtained from the department and payment cannot, for good cause, be made pursuant to subdivision (a). Banking costs incurred for the Fedwire transaction charged to the employer and to the state shall be paid by the employer.

(f) "Business day" means any day other than a Saturday, Sunday, legal holiday as recognized by the Internal Revenue Service, statewide legal holiday as recognized by the State of California pursuant to Section 6700 of the Government Code, or a day in which the department is closed pursuant to Section 12b of the Code of Civil Procedure.

(g) "Settlement date" means the date on which an exchange of funds with respect to an entry is reflected on the books of the Federal Reserve Bank.

(h) For the purposes of Section 13021, the "cumulative average payment" means the cumulative dollar amount of deposits divided by the number of payments submitted during a given period. For the purposes of this section, the "cumulative average payment" may also be defined as a single annual deposit, when only one payment is made during the 12-month period ending June 30.

SEC. 20. (a) Section 7.1 of this bill incorporates amendments to Section 1088.5 of the Unemployment Insurance Code proposed by both this bill and Assembly Bill 174. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2013, (2) each bill amends Section 1088.5 of the Unemployment Insurance Code, and (3) Assembly Bill 1794 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Assembly Bill 174, in which case Sections 7, 7.2, and 7.3 of this bill shall not become operative.

(b) Section 7.2 of this bill incorporates amendments to Section 1088.5 of the Unemployment Insurance Code proposed by both this bill and Assembly Bill 1794. It shall only become operative if (1) both bills are enacted and become effective on or before

January 1, 2013, (2) each bill amends Section 1088.5 of the Unemployment Insurance Code, (3) Assembly Bill 174 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Assembly Bill 1794 in which case Sections 7, 7.1, and 7.3 of this bill shall not become operative.

(c) Section 7.3 of this bill incorporates all of the substantive amendments to Section 1088.5 of the Unemployment Insurance Code proposed by this bill, Assembly Bill 174, and Assembly Bill 1794. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2013, (2) all three bills amend Section 1088.5 of the Unemployment Insurance Code, and (3) this bill is enacted after Assembly Bill 174 and Assembly Bill 1794, in which case Sections 7, 7.1, and 7.2 of this bill shall not become operative.

Approved _____, 2012

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Governor